

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

TIMOTHY JACKSON, <i>Plaintiff,</i>	§ § §	
v.	§	Civil Action No. 4:21-cv-00033
LAURA WRIGHT, et. al., <i>Defendants.</i>	§ §	

DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO STAY DISCOVERY

TO THE HONORABLE JUDGE AMOS L. MAZZANT:

Plaintiff's Response (Dkt. No. 24) argues that the sovereign immunity defense raised in Defendants' Motion for Summary Judgment should be rejected, but Plaintiff does *not* dispute, however, that the Court must first rule on that sovereign immunity defense before permitting discovery to proceed. *E.g., Nieto v. San Perlita Indep. Sch. Dist.*, 894 F.2d 174, 177 (5th Cir. 1990) (stating that "until resolution of the threshold question of the application of an immunity defense, discovery should not be allowed." (quotation omitted)); *Williamson v. U.S. Dep't of Agric.*, 815 F.2d 368, 383 (5th Cir. 1987) (holding that the district court "acted properly in staying discovery in this case pending resolution of the immunity issues."). One of the "salient benefits" of immunity from suit is "to protect public officials from expensive, intrusive discovery until and unless the requisite showing overcoming immunity is made." *Backe v. LeBlanc*, 691 F.3d 645, 648 (5th Cir. 2012).

The loss of that benefit is not hypothetical in this case. After Defendants filed their motion to stay discovery, Plaintiff rushed to set four depositions for May 18 and 19, 2021 (both faculty and

graduate student/teaching fellow; party and non-party), and to seek third-party discovery from seven UNT officials by June 1, 2021: Jennifer Cowley, Provost and Vice President for Academic Affairs; Benjamin Brand, Chair of the Department of Music History, Theory and Ethnomusicology; and the five members of the committee that reviewed the practices and procedures used in publishing Volume 12 of the Journal of Schenkerian Studies. *See* Exhibit A. Plaintiff noticed the deposition of two defendants without first conferring with counsel on dates, which coincide with one of the busiest times of the academic year—the end of the semester. The rest of the UNT employees subject to Plaintiff's broad discovery requests and deposition subpoenas are not named parties to this action but are entitled to the protection from the burden of discovery before the Court rules on the jurisdictional challenges raised in Defendants' Motion to Dismiss.

Defendants respectfully request that the Court grant their motion to stay discovery pending resolution of their motion to dismiss.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

GRANT DORFMAN
Deputy First Assistant Attorney General

SHAWN COWLES
Deputy Attorney General for Civil Litigation

THOMAS A. ALBRIGHT
Chief, General Litigation Division

/s/ Matthew Bohuslav
MATTHEW BOHUSLAV
Texas Bar No. 24069395
Assistant Attorney General
Office of the Attorney General
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Phone: 512-463-2120
Fax: 512-320-0667
matthew.bohuslav@oag.texas.gov
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of May, 2021, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which automatically provided notice to the following CM/ECF participants:

Jonathan F. Mitchell
Mitchell Law, PLLC
111 Congress Avenue, Suite 400
Austin, Texas 78701
jonathan@mitchell.law

Michael Thad Allen, Esq.
Allen Law, LLC
PO BOX 404
Quaker Hill, CT 06375
m.allen@allen-lawfirm.com
Attorneys for Plaintiff

/s/ Matthew Bohuslav
MATTHEW BOHUSLAV
Assistant Attorney General